

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

A.B., by and through his parents, L.B. and  
M.B., on his own behalf and on behalf of  
similarly situated others; L.B.; and M.B.,

Plaintiffs,

v.

PREMERA BLUE CROSS,

Defendant.

NO.

**COMPLAINT**

**(CLASS ACTION)**

**I. INTRODUCTION**

1. The Patient Protection and Affordable Care Act (“Affordable Care Act” or “ACA”) prohibits discrimination on the basis of age and sex in health care. This includes the administration, application, and enforcement of any exclusions of gender-affirming care by health insurance companies and claims administrators that receive federal financial assistance and participate in health care insurance marketplaces established under the ACA.

2. As a health insurance company, Premera Blue Cross (“Premera”) provides health insurance and related services to approximately 2 million people across the States of Washington and Alaska. And as a health carrier, Premera, directly or through a subsidiary, participates in the health care insurance marketplaces including the Washington Health Benefit Exchange in Washington State. In doing so, and

1 notwithstanding its legal obligation to not discriminate on the basis of age or sex  
 2 pursuant to Section 1557 of the ACA, Premera administers and enforces an exclusion of  
 3 coverage of gender-affirming care (including medically necessary surgery) for  
 4 transgender youth under the age of 18. Premera's exclusion deprives transgender youth  
 5 of essential, evidence-based, and even lifesaving medical care. The exclusion facially  
 6 excludes coverage for gender-affirming surgical care that transgender adolescents under  
 7 18 may require.

8 3. Plaintiff A.B., a fifteen-year-old transgender boy, and his parents, L.B. and  
 9 M.B., are being discriminated against on the basis of sex because A.B. is transgender.  
 10 They are also being discriminated against based on age because Premera has arbitrarily  
 11 imposed a categorical exclusion based on age, notwithstanding that medical care should  
 12 be individualized, based on a particular patient's development and medical needs, and  
 13 consistent with well-established clinical practice guidelines.

14 4. Through L.B.'s employment, A.B. receives health insurance coverage  
 15 through the Association of Washington Business HealthChoice Health Plan, a non-  
 16 grandfathered Washington insured plan offered by Premera. A.B. is enrolled in the  
 17 Premera insured plan as a dependent of L.B.

18 5. Premera purports to cover gender-affirming care when medically  
 19 necessary, according to the express terms of the plan. *Exh. A*, pp. 3, 9, 20.

20 6. Indeed, gender-affirming care is typically covered without arbitrary and  
 21 categorical age limitations: "Benefits for medically necessary gender affirming care  
 22 services are subject to the same cost shares that you would pay for inpatient or outpatient  
 23 treatment for other covered medical conditions *for all ages*." *Id.*, p. 20 (emphasis added).

24 7. Despite this plan language, Premera categorically excludes coverage for  
 25 gender-affirming surgical care for insureds under the age of 18. *See Exh. B*, Medical  
 26 Policy 7.01.557 Gender Transition/Affirmation Surgery and Related Services. Premera

1 has imposed an exclusion of gender-affirming surgical care for youth since May 1, 2016.  
2 *Id.*, p. 37 of 41.

3 8. A.B.'s pre-service request for authorization of gender-affirming care in the  
4 form of chest surgery (mastectomy) and reconstruction was denied because he is not yet  
5 18, even though he, his parents, and treating medical providers all agree that the chest  
6 surgery and reconstruction is clinically appropriate.

7 9. Premera's internal medical policies for the same or similar procedures  
8 provided to treat cisgender patients are not restricted or limited based upon the  
9 insured's age.

10 10. For example, Premera does not impose an age restriction on medically  
11 necessary breast reduction for cisgender female insureds. *See Exh. C.*

12 11. Premera does not apply an age restriction on medically necessary  
13 mastectomy for gynecomastia when performed on cisgender male insureds. *See Exh. D.*

14 12. Premera does not apply an age restriction on medically necessary  
15 prophylactic mastectomy for cisgender female insureds. *See Exh. E.*

16 13. Based on information and belief, Premera only imposes an age restriction  
17 on mastectomy when prescribed to treat gender dysphoria. In other words, Premera only  
18 imposes an age restriction when the surgical care is prescribed for transgender insureds.

19 14. Premera's age restriction on coverage of gender-affirming care is not  
20 consistent with generally accepted standards of medical practice. Nor is the age limit  
21 clinically appropriate or effective for the treatment of gender dysphoria. *See Exh. A*, p. 76  
22 (definition of "medical necessity").

23 15. The Premera medical policy relies on the World Professional Association  
24 for Transgender Health (WPATH) Standards of Care as the "best available science and  
25 expert professional consensus." *Exh. B*, p. 34 of 41.

1           16.     WPATH, however, confirms that chest surgery and reconstruction to treat  
2 gender dysphoria can be medically necessary for transgender adolescents under the age  
3 of 18. Specifically, WPATH Standards of Care, Version 8 details the requirements for  
4 gender-affirming medical and surgical treatment for adolescents under the age of 18. *See,*  
5 *e.g., Coleman, E., et al. (2022), Standards of Care for the Health of Transgender and*  
6 *Gender Diverse People, Version 8, International Journal of Transgender Health, 23(Suppl 1),*  
7 *S1-S259, available at <https://doi.org/10.1080/26895269.2022.2100644> (Statement of*  
8 *Recommendations 6.12) (last visited 6/22/23).*

9           17.     Premera cites certain studies asserting that developmental maturity is  
10 required in order to “make a truly informed, educated decision” required for gender-  
11 affirming surgical care. *Exh. B*, pp. 34–35 of 41.

12           18.     Premera, however, does not impose the same limitations on coverage for  
13 similar surgical procedures for cisgender insureds with other conditions who are under  
14 age 18. *See Exhs. C–E.*

15           19.     Finally, while Premera notes that coverage of gender-affirming care is  
16 mandated in Washington State as of 2022, it did not remove or revise its internal policy  
17 limiting coverage of such treatment to only insureds over the age of 18. *See Exh. B*, p. 35  
18 of 41.

19           20.     Premera’s internal medical policy of excluding gender-affirming surgical  
20 care for transgender adolescents under 18 contravenes the well-established medical  
21 consensus that gender-affirming health care can be medically necessary and even  
22 lifesaving for adolescents and adults, and that determinations about medical necessity  
23 should be individualized.

24           21.     A.B. has been denied coverage for medically necessary gender-affirming  
25 health care because A.B. is transgender and under the age of 18, based on the exclusion  
26 imposed by Premera’s internal medical policy.



1 is insured and administered by Premera. Together, L.B. and M.B. pay for A.B.'s health  
2 care needs.

3 30. *Defendant Premera Blue Cross.* Defendant Premera Blue Cross  
4 ("Premera") is a health carrier that issues and administers health plans in Washington  
5 State. Premera is a recipient of federal financial assistance and participates in health care  
6 insurance marketplaces established under the ACA, including the Washington Health  
7 Benefit Exchange. Premera is headquartered in Mountlake Terrace, Snohomish County,  
8 Washington. Premera is not a religious organization.

### 9 III. JURISDICTION AND VENUE

10 31. This action arises under Section 1557 of the Patient Protection and  
11 Affordable Care Act, 42 U.S.C. § 18116.

12 32. This Court has original jurisdiction over the subject matter of this action  
13 pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the  
14 Constitution and laws of the United States.

15 33. Declaratory relief is authorized by Rules 57 and 65 of the Federal Rules of  
16 Civil Procedure and by 28 U.S.C. §§ 2201 and 2202.

17 34. Venue is proper under 28 U.S.C. § 1391(b)(2) because, *inter alia*, Premera is  
18 located in and a substantial part of the events giving rise to the claim occurred in  
19 Snohomish County, Washington.

20 35. The Court has personal jurisdiction over Premera because Premera is  
21 headquartered in Snohomish County, Washington.

### 22 IV. FACTUAL BACKGROUND

#### 23 A. *Gender Dysphoria and Its Treatment*

24 36. Every individual's sex is multifaceted and comprises a number of  
25 characteristics, including but not limited to chromosomal makeup, hormones, internal  
26

1 and external reproductive organs, secondary sex characteristics, and most importantly,  
2 gender identity.

3 37. Gender identity is a person's internal sense of their sex. It is an essential  
4 element of human identity that everyone possesses, and a well-established concept in  
5 medicine.

6 38. A person's sex is generally assigned at birth based solely on a visual  
7 assessment of external genitalia at the time of birth. External genitalia are only one of  
8 several sex-related characteristics and are not always indicative of a person's sex.

9 39. For most people, these sex-related characteristics are all aligned, and the  
10 visual assessment performed at birth serves as an accurate proxy for that person's  
11 gender.

12 40. Where a person's gender identity does not match that person's sex  
13 assigned at birth, however, gender identity is the critical determinant of that person's  
14 sex.

15 41. The ability to live in a manner consistent with one's gender identity is vital  
16 to the health and wellbeing of transgender people.

17 42. For transgender people, an incongruence between their gender identity  
18 and sex assigned at birth can result in a feeling of clinically significant stress and  
19 discomfort known as gender dysphoria.

20 43. Being transgender is not a medical condition to be treated or cured. But  
21 gender dysphoria—the clinically significant distress that some transgender people  
22 experience as a result of the incongruence between their gender identity and sex  
23 assigned at birth—is a serious medical condition.

24 44. Gender dysphoria is recognized in the American Psychiatric Association's  
25 Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision  
26 ("DSM-5-TR"), which sets forth the criteria for diagnosing gender dysphoria, and by

1 other leading medical and mental health professional groups, including the American  
2 Medical Association (“AMA”) and the American Psychological Association.

3 45. Gender dysphoria can be assessed, diagnosed, and treated in accordance  
4 with evidence-based, widely accepted clinical practice guidelines, such as WPATH’s  
5 Standards of Care, Version 8.

6 46. The goal of medical treatment for gender dysphoria is to eliminate or  
7 alleviate the clinically significant distress by helping a transgender person live in  
8 alignment with their gender identity. This treatment is sometimes referred to as “gender  
9 transition,” “transition-related care,” or “gender-affirming care.”

10 47. The clinical practice guidelines for the treatment of gender dysphoria, such  
11 as WPATH’s Standards of Care and the Endocrine Society’s guidelines, are widely  
12 accepted as best practices for the treatment of adolescents and adults diagnosed with  
13 gender dysphoria and have been recognized as authoritative by leading medical  
14 organizations, including the American Academy of Pediatrics, AMA, and American  
15 Psychological Association, which agree that this care is safe, effective, and medically  
16 necessary for many adolescents suffering from gender dysphoria.

17 48. The precise treatment for gender dysphoria depends upon each person’s  
18 individualized needs, and the guidelines for medical treatment differ depending on  
19 whether the treatment is for an adolescent or an adult.

20 49. Under the WPATH Standards of Care, medically necessary treatments  
21 may include, among other things, “[h]ormone therapy” and “[s]urgery to change  
22 primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or  
23 internal genitalia, facial features, body contouring).”

24 50. The individualized steps that transgender people take to live in a manner  
25 consistent with their gender, rather than the sex they were assigned at birth, are known  
26 as transitioning.



1           51.     Transitioning is particular to the individual but typically includes social,  
2 legal, and medical transition.

3           52.     Social transition entails a transgender individual living in accordance with  
4 their gender identity in all aspects of life. For example, social transition can include  
5 wearing attire, following grooming practices, and using pronouns consistent with that  
6 person's gender identity. The steps a transgender person can take as part of their social  
7 transition help align their gender identity with all aspects of everyday life.

8           53.     Legal transition involves steps to formally align a transgender individual's  
9 legal identity with their gender identity, such as legally changing one's name and  
10 updating the name and gender marker on their driver's license, birth certificate, and  
11 other forms of identification.

12           54.     Medical transition, a critical part of transitioning for many transgender  
13 people, includes gender-affirming care that bring the sex-specific characteristics of a  
14 transgender person's body into alignment with their gender identity. Gender-affirming  
15 care can involve counseling to obtain a diagnosis of gender dysphoria, hormone  
16 replacement therapy, surgical care, or other medically necessary treatments for gender  
17 dysphoria.

18           55.     Gender-affirming surgical care might be sought by a transgender person  
19 to better align primary or secondary sex characteristics with their gender identity.  
20 Surgical care can include, but is not limited to, hysterectomies, gonadectomies,  
21 mammoplasties, mastectomies, orchiectomies, vaginoplasties, and phalloplasties. These  
22 treatments are for the purpose of treating gender dysphoria.

23           56.     Under the WPATH Standards of Care, transgender adolescents also may  
24 receive medically necessary chest reconstructive surgeries before the age of majority  
25 provided that the adolescent has lived in their affirmed gender for a significant period  
26 of time.

1           57. These various components associated with transition—social, legal, and  
2 medical transition—do not change an individual’s sex, as that is already established by  
3 gender identity, but instead bring the individual’s appearance, legal identity, and sex-  
4 related characteristics into greater alignment with the individual’s gender identity and  
5 lived experience.

6           58. Medical treatment recommended for and provided to transgender  
7 adolescents with gender dysphoria can substantially reduce lifelong gender dysphoria  
8 and eliminate the medical need for surgery or other medical interventions later in life.

9           59. Providing gender-affirming medical care can be lifesaving treatment and  
10 positively change the short- and long-term health outcomes for transgender adolescents.

11           60. The consequences of untreated, or inadequately treated, gender dysphoria  
12 are dire. Symptoms of untreated gender dysphoria include intense emotional suffering,  
13 anxiety, depression, suicidality, and other attendant mental health issues. Untreated  
14 gender dysphoria is associated with higher levels of stigmatization, discrimination, and  
15 victimization, contributing to negative self-image and the inability to function effectively  
16 in daily life.

17           61. When transgender people are provided with access to appropriate and  
18 individualized gender-affirming care in connection with treatment of gender dysphoria,  
19 these symptoms can be alleviated and even prevented.

20           62. The AMA, American Psychological Association, American Psychiatric  
21 Association, Endocrine Society, American College of Obstetricians and Gynecologists,  
22 American Academy of Family Physicians, and other major medical organizations have  
23 recognized that gender-affirming care is medically necessary, safe, and effective  
24 treatment for gender dysphoria—and that access to such treatment improves the health  
25 and well-being of transgender people. Each of these groups has publicly opposed  
26

1 exclusions of coverage of this treatment by private and public health care administrators  
2 and payors, like the exclusion at issue here.

3 63. WPATH has stated that, like hormone replacement therapy and other  
4 gender-affirming treatments, the “medical procedures attendant to sex reassignment are  
5 not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient,” but instead are  
6 “medically necessary for the treatment of the diagnosed condition.” Nor are they  
7 experimental, because “decades of both clinical research and medical research show that  
8 they are essential to achieving well-being for the [transgender] patient.”

9 64. In 2008, the AMA passed Resolution 122 recognizing gender dysphoria  
10 (then known as gender identity disorder) as a “serious medical condition” which, “if left  
11 untreated, can result in clinically significant psychological distress, dysfunction,  
12 debilitating depression, and for some people without access to appropriate medical care  
13 and treatment, suicidality and death.” AMERICAN MED. ASS’N, *Resolution 122: Removing*  
14 *Financial Barriers to Care for Transgender Patients* (June 16, 2008). The AMA also opposes  
15 exclusions of coverage for treatment of gender dysphoria because “many of these same  
16 treatments ... are often covered for other medical conditions” and “the denial of these  
17 otherwise covered benefits for patients suffering from [gender dysphoria] represents  
18 discrimination based solely on a patient’s gender identity.” *Id.*

19 65. Similarly, in 2019, the AMA published an Issue Brief reiterating that, “The  
20 AMA opposes any discrimination based on an individual’s sex, sexual orientation or  
21 gender identity, opposes the denial of health insurance on the basis of sexual orientation  
22 or gender identity, and supports public and private health insurance coverage for  
23 treatment of gender dysphoria as recommended by the patient’s physician.” AMERICAN  
24 MED. ASS’N and GLMA, *Issue brief: Health insurance coverage for gender-affirming care of*  
25 *transgender patients* (2019), at 5, [https://www.ama-assn.org/system/files/2019-](https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf)  
26 [03/transgender-coverage-issue-brief.pdf](https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf) (last visited 6/22/23).

1           66. In the past, public and private health administrators and payors excluded  
2 coverage for medically necessary treatment of gender dysphoria on the erroneous  
3 assumption that such treatments were cosmetic or experimental. Today, the medical  
4 consensus recognizes that exclusions of treatment for gender dysphoria on those  
5 grounds have no basis in medical science.

6 ***B. Premera Is Subject to the ACA's Anti-Discrimination Law***

7           67. Premera offers health care plans in health care exchanges established  
8 under the ACA.

9           68. At all relevant times, Premera has received and continues to receive federal  
10 financial assistance in part of its health programs or activities, including programs  
11 and/or activities engaged in by affiliates, parents, or subsidiaries of Premera.

12           69. At all relevant times, Premera was and remains a “health program or  
13 activity”, a part of which receives federal financial assistance. 42 U.S.C. § 18116. As a  
14 result, Premera was and continues to be a “covered entity” under the Affordable Care  
15 Act, Section 1557.

16           70. Premera provided assurances to the U.S. Department of Health and  
17 Human Services that it complies with the requirements of Section 1557. *See* 45 C.F.R.  
18 § 92.4.

19           71. Premera also provided written assurances to A.B. and his parents that it  
20 would comply with the requirements of Section 1557. *See, e.g., Exh. A*, p. iii.

21           72. Despite these assurances, Premera has administered the exclusion of  
22 medically necessary gender-affirming surgical care for transgender youth under the age  
23 of 18. Premera continues to do so, to date.

1 **C. Premera Denies Coverage of Gender-Affirming Surgical Care for A.B.**

2 73. A.B. is a boy who is transgender. That means that he was assigned the sex  
3 of female at birth, but his gender identity is male. A.B. has openly identified and lived  
4 as male since May 2021.

5 74. A.B. has been diagnosed with gender dysphoria.

6 75. Although Premera has covered some of A.B.'s past treatment for gender  
7 dysphoria, Premera has denied coverage for A.B.'s medically necessary gender-  
8 affirming surgical care solely because he is transgender and under the age of 18.

9 76. Specifically, Premera denied all coverage for A.B.'s chest surgery and  
10 reconstruction by letter dated December 3, 2022. *Exh. F*. The denial of coverage was  
11 based on Premera's medical policy No. 7.01.557 Gender Transition/ Affirmation Surgery  
12 and Related Services. *Id.* The sole reason for the denial was that A.B. was under 18 years  
13 old. *Id.*, p. 2.

14 77. A.B.'s medical providers at the Seattle Children's Gender Clinic appealed  
15 Premera's denial on December 23, 2022. *Exh. G*. They explained and presented  
16 documentation to show that A.B. met all of the requirements for coverage of gender-  
17 affirming surgical care consistent with WPATH and generally accepted medical  
18 standards. *Id.*

19 78. On December 30, 2022, Premera denied the appeal, again stating that the  
20 gender-affirming surgical care sought was "not considered medically necessary for  
21 people under age 18." *Exh. G*.

22 79. The sole reason for the denial given by Premera was its determination that  
23 gender-affirming surgery can never be medically necessary for youth under the age of  
24 18. *Exhs. G-H*.

25 80. A.B.'s parents have repeatedly sought the internal records related to  
26 Premera's denials.

1           81. They first requested the records on January 31, 2023. *Exh. I*. Premera never  
2 responded to the request, even though it was sent via certified mail and return receipt  
3 requested, so that Plaintiffs know it was received.

4           82. Plaintiffs' counsel also sent a request for the internal records, which was  
5 similarly ignored. *Exh. J*.

6           83. Finally, after Plaintiffs sent a pre-litigation demand letter to Premera, the  
7 internal records were received on or about June 9, 2023.

8           84. The internal records show that Premera's assistant medical director,  
9 Dr. Robert Small, reviewed A.B.'s appeal of the denial of pre-authorization for coverage  
10 of A.B.'s chest surgery. *Exh. K*.

11           85. Upon information and belief, Dr. Small is the sole psychiatrist on staff at  
12 Premera.

13           86. Dr. Small apparently applies his own criteria when he reviews claims for  
14 top surgery for insureds under the age 18. *Id.*

15           87. Specifically, Dr. Small's notes indicate that he will "make an exception to  
16 the minimum age of 18" for gender-affirming chest surgery when all of the other  
17 published criteria in the Medical Policy (*Exh. B*) are met and when:

- 18           • The member is binding and the breast/chest binding is causing rib  
19 injury/skeletal injury, respiratory compromise, significant skin wounds  
20 (which can be a precursor to rib/skeletal injury) or pain (which is generally  
21 a precursor to rib/skeletal injury);
- 22           • Or the member is experiencing suicidal ideation and/or intent or self-harm  
23 behaviors or severe functional impairment due to psychiatric symptoms  
24 due to breast-induced gender dysphoria;

- Or the member has severe gynecomastia to the extent that binding is not feasible and the member is therefore unable to adequately reduce visible breast size or hide breasts.

See *Exh. K*, p. AB\_PRE00000034.

88. Dr. Small's personal (and seemingly arbitrary) criteria for an exception were never disclosed to A.B. or his parents and were not included by Premera in any of the denial letters to them.

89. Dr. Small's personal criteria for top surgery for transgender persons under the age of 18 are not based on and are not consistent with any generally accepted clinical practice guidelines.

90. Dr. Small's personal criteria do not appear in any of the sources Premera relied upon for crafting its Gender Transition/ Affirmation Surgery and Related Services medical policy.

91. Premera's application of Dr. Small's personal criteria, imposed only on gender-affirming care, also is illegal sex discrimination.

92. A.B. is scheduled to have gender-affirming chest surgery and reconstruction on June 27, 2023, by Dr. Morrison at Seattle Children's Hospital.

93. As a result of Premera's deliberate discriminatory actions, A.B. has not received pre-service authorization for medically necessary treatment for his gender dysphoria. His parents, L.B. and M.B., have been forced to make arrangements to pay out-of-pocket for A.B.'s needed surgery.

94. A.B. and his parents, L.B. and M.B., anticipate that they will incur additional expenses related to his medically necessary treatment for gender dysphoria if Premera continues to administer and enforce its exclusion of gender-affirming surgical care for transgender youth.





1 coverage of required surgical care because they were or are  
2 under the age of 18.

3 101. *Size of Class.* The proposed class is expected to be so numerous and  
4 geographically dispersed that joinder of all members is impracticable.

5 102. *Class Representative A.B.* Named Plaintiff A.B. is a member of the  
6 proposed class. A.B. is enrolled in a Premera non-grandfathered group health plan.  
7 Premera has applied its internal medical policy that excludes coverage for gender-  
8 affirming surgical care for youth under the age of 18. A.B.'s treating providers have  
9 prescribed and recommended gender-affirming mastectomy and reconstruction that is  
10 medically necessary and effective to treat A.B.'s gender dysphoria. The proposed  
11 treatment meets all of Premera's requirements for coverage, except that A.B. is under the  
12 age of 18. By the plain terms of A.B.'s Premera plan, this treatment should be covered,  
13 when medically necessary for transgender youth under 18, just as it is for cisgender  
14 youth with other conditions. Nonetheless, Premera refuses to cover the surgical care  
15 solely because A.B. is seeking the treatment for his gender dysphoria and he is under the  
16 age of 18. A.B.'s claims are typical of the claims of other members of the proposed class,  
17 and through his parents, he will fairly and adequately represent the interests of the class.

18 103. *Common Questions of Law and Fact.* This action requires a determination  
19 of whether Premera's internal medical policy, which has the effect of denying coverage  
20 for gender-affirming surgical care for transgender insureds under the age of 18, violates  
21 Section 1557 of the Affordable Care Act. Adjudication of this issue will in turn determine  
22 whether Premera must reprocess all such wrongfully denied claims and be prospectively  
23 enjoined from administering such exclusions now and in the future.

24 104. *Separate suits would create risk of varying conduct requirements.* The  
25 prosecution of separate actions by proposed class members against Premera would  
26 create a risk of inconsistent or varying adjudications with respect to individual class

1 members that would establish incompatible standards of conduct. Certification is  
2 therefore proper under Federal Rule of Civil Procedure 23(b)(1).

3 105. *Premera has acted on grounds generally applicable to the relevant class.*  
4 By administering and applying policies and exclusions that result in the denial of  
5 coverage of gender-affirming surgical care, Premera has acted on grounds generally  
6 applicable to the relevant class, rendering declaratory relief appropriate respecting the  
7 entirety of the class for the particular claim. Certification is therefore proper under  
8 Federal Rule of Civil Procedure 23(b)(2).

9 106. *Venue.* This action can be most efficiently prosecuted as a class action in the  
10 Western District of Washington, where Premera and A.B. reside. The case is properly  
11 assigned to the Western District of Washington in Seattle because the claim arose in  
12 Snohomish County, Washington, where Premera resides.

13 107. *Class Counsel.* A.B. and his parents have retained experienced and  
14 competent class counsel. Plaintiffs are represented by Sirianni Youtz Spoonemore  
15 Hamburger PLLC, a Seattle-based law firm with significant experience representing  
16 individuals who have been denied pension, health, or disability benefits under plans  
17 governed by both state law and ERISA, as well as in class actions. Plaintiffs are also  
18 represented by Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal"), the  
19 nation's oldest and largest legal organization dedicated to protecting the rights of  
20 lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people and everyone living  
21 with HIV; and Q Law Foundation of Washington ("Q Law Foundation"), which protects  
22 the rights of LGBTQ+ Washingtonians through legal services and community  
23 organizing. Lambda Legal and Q Law Foundation have extensive federal court  
24 experience litigating on behalf of LGBTQ+ people, including regarding transgender  
25 people's access to nondiscriminatory health care, and Lambda Legal has served as class  
26 counsel and putative class counsel in a number of LGBTQ+-related cases.

**VI. CLAIMS FOR RELIEF:**

**ONE – VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT  
(SEX DISCRIMINATION), 42 U.S.C. § 18116**

108. Plaintiffs re-allege and incorporate each of the allegations in the paragraphs above as though fully set forth herein.

109. Plaintiffs state this cause of action on behalf of themselves and members of the proposed class for purposes of seeking declaratory and injunctive relief, and they challenge the discriminatory sex-based discrimination arising out of the administration of the exclusions denying coverage for gender-affirming surgical care, such as the exclusion to transgender persons under the age of 18, both facially and as applied to Plaintiffs and the proposed class.

110. Named Plaintiffs also state this cause of action for their individual compensatory damages, including but not limited to out-of-pocket damages, consequential damages, and nominal damages.

111. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an individual shall not, on the ground prohibited under ... title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) ... be excluded from participation in, denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.”

112. Premera is a covered “health program or activity”, a part of which receives federal financial assistance and is therefore a “covered entity” for purposes of Section 1557.

113. Because Premera is a covered entity under Section 1557 of the ACA, Plaintiffs and members of the proposed class have a right under Section 1557 to receive health benefits administered by Premera free from discrimination on the basis of sex, sex characteristics, gender identity, nonconformity with sex stereotypes, transgender status, or gender transition.

1           114. Discrimination on the basis of sex characteristics, gender identity,  
2 nonconformity with sex stereotypes, transgender status, or gender transition is  
3 discrimination on the basis of “sex” under Section 1557.

4           115. A covered entity, such as Premera, cannot cover chest surgery (such as  
5 mastectomy and chest reconstruction) for cisgender youth while excluding the same  
6 surgical care for transgender youth. Premera’s medical policy that excludes coverage of  
7 this procedure for transgender youth is discrimination based upon sex.

8           116. Premera’s exclusion of gender-affirming surgical care for transgender  
9 youth violates Section 1557’s prohibition against discrimination on the basis of sex in a  
10 health program or activity receiving federal financial assistance.

11           117. By administering the internal medical policy which excludes all coverage  
12 of gender-affirming surgical care for transgender youth, Premera has drawn a  
13 classification that discriminates on the basis of “sex.” Specifically, Premera has denied  
14 A.B. and other similarly situated individuals coverage for medically necessary services  
15 based on their sex, sex characteristics, gender identity, nonconformity with sex  
16 stereotypes, transgender status, or gender transition. Other enrollees whose gender  
17 identity conforms with their sex assigned at birth are able to receive these services when  
18 medically necessary, and even when they are under the age of 18.

19           118. By implementing the hidden exclusion in its medical policy, Premera has  
20 intentionally discriminated and continues to discriminate on the basis of sex against  
21 A.B., his parents, and similarly situated individuals in violation of Section 1557.

22           119. Premera has discriminated against Plaintiffs and the members of the  
23 proposed class on the basis of sex in violation of Section 1557 and have thereby denied  
24 Plaintiffs and the members of the proposed class the full and equal participation in,  
25 benefits of, and right to be free from discrimination in a health program or activity.  
26

1           120. Plaintiffs and the members of the proposed class have been and continue  
 2 to be injured by Premera's administration, application, and enforcement of the exclusion  
 3 of gender-affirming surgical care for transgender persons under the age of 18 in its  
 4 medical policy, and they are entitled to reprocessing of all claims wrongfully denied and  
 5 all medical expenses never submitted for consideration to Premera as a result of any such  
 6 exclusions.

7           121. Without reprocessing, declaratory, and prospective injunctive relief from  
 8 Premera's ongoing, discriminatory medical policy, Plaintiffs and proposed class  
 9 members have suffered and will continue to suffer irreparable harm.

10           **TWO – VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT**  
 11           **(AGE DISCRIMINATION), 42 U.S.C. § 18116**

12           122. Plaintiffs re-allege and incorporate each of the allegations in the  
 13 paragraphs above as though fully set forth herein.

14           123. Plaintiffs state this cause of action on behalf of themselves and members of  
 15 the proposed class for purposes of seeking declaratory and injunctive relief, and they  
 16 challenge the discriminatory age-based discrimination arising out of the administration  
 17 of the exclusions denying coverage for gender-affirming surgical care, such as the  
 18 exclusion, to transgender persons under the age of 18, both facially and as applied to  
 19 Plaintiffs and the proposed class.

20           124. Named Plaintiffs also state this cause of action for their individual  
 21 compensatory damages, including but not limited to out-of-pocket damages,  
 22 consequential damages, and nominal damages.

23           125. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that "an individual  
 24 shall not, on the ground prohibited under ... the Age Discrimination Act of 1975 (42  
 25 U.S.C. 6101 et seq.) ... be excluded from participation in, denied the benefits of, or be  
 26

1 subjected to discrimination under, any health program or activity, any part of which is  
2 receiving Federal financial assistance.”

3 126. Premera is a covered “health program or activity”, a part of which receives  
4 federal financial assistance and is therefore a “covered entity” for purposes of  
5 Section 1557.

6 127. Because Premera is a covered entity under Section 1557 of the ACA,  
7 Plaintiffs and members of the proposed class have a right under Section 1557 to receive  
8 health benefits administered by Premera free from discrimination on the basis of age.

9 128. A covered entity, such as Premera, also cannot impose arbitrary and  
10 categorical age limits for coverage of gender-affirming medical care, particularly when  
11 the treatment is clinically effective for the age group.

12 129. The design and implementation of categorical age limits for coverage,  
13 particularly when the treatment is clinically effective for the age group, constitutes age  
14 discrimination.

15 130. By administering the internal medical policy which excludes all coverage  
16 of gender-affirming surgical care for transgender youth, Premera has drawn a  
17 classification that discriminates on the basis of “sex.” Specifically, Premera has denied  
18 A.B. and other similarly situated individuals coverage for medically necessary services  
19 based on their sex, sex characteristics, gender identity, nonconformity with sex  
20 stereotypes, transgender status, or gender transition. Other enrollees whose gender  
21 identity conforms with their sex assigned at birth are able to receive these services when  
22 medically necessary, and even when they are under the age of 18.

23 131. By implementing the hidden exclusion in its medical policy, Premera has  
24 intentionally discriminated and continues to discriminate on the basis of age against  
25 A.B., his parents, and similarly situated individuals in violation of Section 1557.

132. Premera has discriminated against Plaintiffs and the members of the proposed class on the basis of age in violation of Section 1557 and have thereby denied Plaintiffs and the members of the proposed class the full and equal participation in, benefits of, and right to be free from discrimination in a health program or activity.

133. Plaintiffs and the members of the proposed class have been and continue to be injured by Premera's administration, application, and enforcement of the exclusion of gender-affirming surgical care for transgender persons under the age of 18 in its medical policy, and they are entitled to reprocessing of all claims wrongfully denied and all medical expenses never submitted for consideration to Premera as a result of any such exclusions.

134. Without reprocessing, declaratory, and prospective injunctive relief from Premera's ongoing, discriminatory medical policy, Plaintiffs and proposed class members have suffered and will continue to suffer irreparable harm.

#### **VII. DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

1. Enter judgment on behalf of Plaintiffs and the members of the proposed class due to Premera's discrimination on the basis of sex and age in violation of the Affordable Care Act's Section 1557;

2. Declare that Premera violated the rights of Plaintiffs and the members of the proposed class under Section 1557 of the ACA when it designed, adopted, administered, and/or enforced the exclusion of all coverage for gender-affirming chest surgery for transgender persons under the age of 18 in the Premera medical policy;

3. Enjoin Premera, its agents, employees, successors, and all others acting in concert with them from designing, adopting, administering, or enforcing the medical policy that results in the exclusion of all coverage for gender-affirming chest surgery for transgender persons under the age of 18 and other similar medical policies that Premera



1 administers and enforces in violation of the Affordable Care Act, during the class period,  
2 now, and in the future;

3 4. Require Premera, its agents, employees, successors, and all others acting in  
4 concert with them to reprocess and, when medically necessary and meeting the other  
5 terms and conditions under the relevant plans, provide coverage (payment) for all  
6 denied pre-authorizations and denied claims for coverage during the class period that  
7 were based solely upon the age of the enrollee when seeking gender-affirming chest  
8 surgery;

9 5. Enter judgment in favor of the named Plaintiffs for damages in an amount  
10 to be proven at trial that would fully compensate Plaintiffs for their financial harm and  
11 other damages due to Premera's conduct in violation of Section 1557 of the Affordable  
12 Care Act, including nominal damages;

13 6. Award reasonable attorney fees, costs, and expenses under 42 U.S.C. § 1988  
14 and all other applicable statutes; and

15 7. Award such other and further relief as is just and proper.

16 DATED: June 27, 2023.

17 SIRIANNI YOUTZ  
18 SPOONEMORE HAMBURGER PLLC

19 /s/ Eleanor Hamburger  
Eleanor Hamburger (WSBA #26478)  
20 Email: [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

21 /s/ Daniel S. Gross  
Daniel S. Gross (WSBA #23992)  
22 Email: [dgross@sylaw.com](mailto:dgross@sylaw.com)  
23 3101 Western Avenue, Suite 350  
24 Seattle, WA 98121  
25 Tel. (206) 223-0303; Fax (206) 223-0246  
26



LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan  
(Pro Hac Vice Application forthcoming)  
Email: [ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)  
120 Wall Street, 19th Floor  
New York, NY 10005  
Tel. (646) 307-7406; Fax (212) 658-9721

Q LAW FOUNDATION OF WASHINGTON

/s/ J. Denise Diskin

J. Denise Diskin (WSBA #41425)  
Email: [denise@qlawfoundation.org](mailto:denise@qlawfoundation.org)

/s/ Dallas Martinez

Dallas Martinez (WSBA #52798)  
Email: [dallas@qlawfoundation.org](mailto:dallas@qlawfoundation.org)  
400 East Pine Street, Suite 225  
Seattle, WA 98122  
Tel. (206) 483-2725

*Attorneys for Plaintiffs*